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OCT 25 2004

In re Application of	:	OFFICE OF PETITIONS
William E. Archer	:	
Application No. 10/729,241	:	DECISION ON RENEWED PETITION
Filed: December 5, 2003	:	UNDER 37 C.F.R. §1.137(f)
Attorney Docket No. 1-15822	:	
Title: DUAL FUNCTION BRAKE	:	
SYSTEM	:	

This is a decision on the renewed petition filed September 15, 2004, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

- (1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication¹;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
- (3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The original petition was filed August 16, 2004, and was dismissed via the mailing of a decision on September 9, 2004, as the Petitioner informed the Office that the foreign filing occurred prior to the date of filing the instant application.

¹ See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at <http://www.uspto.gov/web/forms/index.html>.

With the renewed petition, Petitioner sets forth that he included the wrong date in his previous petition. While the petition indicated that the foreign application had been filed in Italy on "November 12, 2003,"² Petitioner now sets forth that he misread the foreign application, and that the filing date should have been given as December 11, 2003, which is subsequent to the filing of the instant application.

Hence, Petitioner has now asserted that although the instant application was filed on December 5, 2003, along with the assertion that "the invention disclosed in the attached **application has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing," the subject matter of the instant application was disclosed in foreign filing less than a week later on December 11, 2003.

37 C.F.R. §1.137(f) requires a statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. Since the statement contained in the instant petition varies from the language required by 37 C.F.R. §1.137(f), the statement contained in the instant petition is being construed as the statement required by 37 C.F.R. §1.137(f) and petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

The petition fee was submitted with the original petition. With the renewed petition, Petitioner has submitted both the notice of rescission and a statement which is being construed as the proper statement of unintentional delay.

The instant petition has been found to be in compliance with 37 C.F.R. §1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. §122(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) is accepted as having been unintentionally delayed.

As such, the renewed petition is **GRANTED**.

After the mailing of the instant decision, the application will be forwarded to Technology Center 3600 for further processing.

² Original petition, page 1

•/ Decision on Renewed Petition

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.



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